Supreme Court of the United States

OCTOBER TERM—1939

No. 342

AMALGAMATED UTILITY WORKERS, affiliated with UTILITY WORKERS ORGANIZING COMMITTEE, CONGRESS OF INDUSTRIAL ORGANIZATIONS

Petitioner

vs.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, *et al.*

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

WILLIAM L. RANSOM
HORACE E. WHITESIDE
P. M. BERKSON
Counsel for respondents

WHITMAN, RANSOM, COULSON & GOETZ
Solicitors for respondents
No. 40 Wall Street
New York City

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BRIEF IN OPPOSITION

Opinions below

The memorandum Opinion of the Court below (R. 13) has not yet been reported.

Jurisdiction

The Order of the Court below (R. 63) was entered on June 2, 1939. Petitioner Amalgamated Utility Workers (hereinafter referred to also as "Amalgamated" or "C I O") seeks to invoke the jurisdiction of this Court by virtue of Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10(e) and (f)

of the National Labor Relations Act (hereinafter usually referred to as "the Act").

Petitioner's motion for an adjudication of civil contempt was made and entitled (R. 1) in the two review proceedings as to an Order of the National Labor Relations Board (hereinafter referred to as "the Board") dated November 10, 1937, instituted respectively by the respondent Companies and by the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor (hereinafter referred to as "the Brotherhood") and seven of its Local Unions made up of employees of the respondents, under Section 10(f) of the Act, which were before this Court at the October Term of 1938 (305 U. S. 197). In the review proceedings, the Board had filed answers which asked for cross-relief by way of enforcement of its Order (95 Fed. [2nd] 390, 392).

Questions presented

Petitioner has stipulated (R. 2) its intention to bring up for review, and to rely upon, only the question as to whether or not it has standing to make and maintain the motion which was denied by the Court below; viz., a motion (R. 3) to adjudge the respondents in civil contempt of Court for alleged violations of the final decree entered upon the application of the Board by the Court below on January 21, 1939 (R. 8-9), which modified in certain respects according to the Mandate of this Court (305 U. S. 197), and granted enforcement of, an Order of the Board under Section 8 of the Act, as to "unfair labor practices."

Statute

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*) are Section 9(a) and Section 10(a), (e) and (f), which are set forth in the Appendix hereto.

Statement

The final decree (R. 8-9) entered by the Court below upon the Board's application on January 21, 1939, in pursuance of the Mandate of this Court, struck from the Board's Order of November 10, 1937, the provisions of its Paragraph 1(f), which would have nullified the respondents' collective bargaining Contracts with the Brotherhood, the labor organization of which a large majority of the respondents' employees were undisputedly members at the time of the prior proceedings (305 U. S. 197, 232) and still are members (R. 28-29, 32-34, 58). Aside from the Contracts, the Board's Order as construed by this Court (305 U. S. at page 239) was granted enforcement, upon the Board's request (R. 8) under Section 10(e) of the Act.

The Board's Order had been made in a proceeding begun by a complaint served by the Board, solely under Section 8 of the Act, as to "unfair labor practices". The question of *representation* was stated by the Board not to be involved in that proceeding (Transcript in Docket No. 916,[1] pages 140, 279, 525-526). The complaint by the Board had originated in a "charge" filed by the C I O affiliate, predecessor of the present petitioner.

At the opening session before the Board's Trial Examiner, the Regional Attorney for the Board opposed successfully an application for intervention by two labor organizations which have since been merged into the Amalgamated. He stated the Board's view of law applicable to its procedure in such a case and of the status of labor organizations therein (Transcript in Docket No. 916, page 139):

> "The only parties to this proceeding, as I see it, are the Government and the Consolidated System. I think that it would be a mistake for the Board to establish precedent that in any proceeding where the public interest is being litigated, any group or any attorney should be permitted to come in as repre-

[1] For convenience, the record in the two review cases at the October Term of 1938 will be cited herein as "Transcript in Docket No. 916".

> senting individual employees or groups of employees who find themselves within the same protective hand as that of those who filed the original charge. There is nothing inconsistent in that statement because the Board, as proceeding here, gives the same protection to the employees represented by Mr. Redfield and Mr. Fink as they do to the employees represented by the labor organization that filed the charge here."

The proofs in support of the complaint were presented solely by counsel for the Board, and an attempted participation by counsel for the C I O was excluded by the Trial Examiner (Transcript in Docket No. 916, pages 338-339).

In their petition for certiorari (page 4), counsel for the Amalgamated represent that, upon their application, "this petitioner thereupon became a formal party" to the review proceedings instituted in the Circuit Court of Appeals by the Companies and by the Brotherhood—the review proceedings in which the present motion was made and entitled (R. 1). The facts are that upon the hearing of those petitions for review, counsel for the C I O asked that Court that "I be permitted to argue and file a brief on its behalf, both on the motion for a stay, as well as on the final argument of this case on the merits." The Court granted this limited application by a notation endorsed "Motion Granted" (Transcript in Docket No. 916, page 1735). Because counsel for the C I O had filed a brief and argued in the Circuit Court of Appeals in support of the Board's request for the enforcement of its Order, his claim of right to do the same things in this Court was not contested. Only in that sense and to that limited extent, was the Amalgamated (or a predecessor) "a formal party" at any stage of the proceeding. In its brief in opposition to the petition of the Brotherhood for certiorari in Docket No. 916—1938 Term, the Board stated to this Court (page 10), as to proceedings under Section 8 of the Act:

> "The Act requires complaints to be served upon employers, who alone are subject to Orders of the Board:

it does not permit the Board to make labor organizations parties to its proceedings."

The Brotherhood did not ask to be made a party, and did not take part, before the Board. As persons or a body "aggrieved" by the Board's Order, the Brotherhood instituted a review proceeding (R. 1), under Section 10(f) of the Act, argued the same before the Circuit Court of Appeals, and petitioned for and obtained certiorari for review by this Court. The present motion of the Amalgamated in the Court below was made in *both* review proceedings (R. 1). The Amalgamated gave the Brotherhood notice thereof (R. 4). The Brotherhood appeared in the Court below and contested the standing of the Amalgamated to make and maintain such a motion.

The Amalgamated's motion, the denial of which it seeks to review, was in form and effect a motion for an adjudication of civil contempt, in furtherance of *enforcement* of claimed "special rights of the petitioner" under the Act and the Board's Order as modified. Specifically, the motion asked (1) That the respondent Companies, etc., be adjudged in contempt of the decree of the Circuit Court of Appeals "for having failed to comply with its decree dated March 21st, 1938, as amended by its decree dated January 21, 1939"; and (2) That the Court take action "to make effective the Order of the National Labor Relations Board, as ordered to be enforced by this Court".

Amalgamated's petition in this Court states (page 12) that its petition for an adjudication of contempt "was filed for the protection of its own rights as well as those of its members". Its contention is that an examination of the "specific provisions" of the Act "clearly indicates an intention to confer *private rights* upon individuals as well as groups or associations" (Petition, page 17). Concerning the Board, the petitioner's contention is stated to be that the Board "has no *duties* of any kind to perform under

the Act. It is an *industrial court of first instance*, pure and simple" (Petition, page 21).

The respondent Companies answered the motion fully on the merits (R. 14-25), and showed affirmatively (R. 22-23) that about 65 per cent of their eligible employees are members of the Brotherhood with dues fully paid (R. 28-29, 32-34, 58), establishing the majority representation of the employees under Section 9(a) of the Act, and that the Companies have complied with Section 9(a) of the Act and with the decision of this Court as to the Contracts in force with the majority labor organization. Further defenses were stated (R. 23-24), including a challenge of the standing of the Amalgamated to institute such a proceeding as to a Board Order (R. 23). The Companies also filed affidavits (R. 26-62) which, with the documents attached as "exhibits", showed in detail the Companies' compliance with the decree of January 21, 1939, and the Board's Order as so modified.

In denying the motion, the Court's memorandum opinion (R. 13) stated only

> "that moving party has no standing to press a charge of civil contempt, if contempt had been committed. Under the National Labor Relations Act the Board is the proper party to apply to the Court for an Order of enforcement and to present to the Court charges that the Court's Order has not been obeyed."

As the petitioner stipulated (R. 2) that it raised, and would rely on, only the question of its standing to institute such a contempt proceeding, the detailed affidavits supporting both the answer (R. 14-25) and Mr. Carlisle's answering affidavit (R. 26-62) were not offered by the petitioner for printing in the record here. Mr. Carlisle's affidavit and the "exhibits" attached thereto (R. 40-62) are deemed to show fully the Companies' compliance with the decree of January 21, 1939, with the Board's Order as modified, and with the Act.

ARGUMENT

The question presented by the petition is one of procedure for the enforcement of claimed private rights, and does not appear to be substantial or doubtful. The decision below was in accord with the rulings of other Circuits as to the nature of the rights and enforcement procedures created by the Act.

Petitioner claims (pages 5, 7, 26) that it and its members are "aggrieved" by alleged non-compliance with the enforcement decree, and that the Act necessarily gives enforcement rights to organizations and persons who would be aided and benefited by enforcement. The premise is that the Act confers private rights upon the Amalgamated and its members, and places in their hands the procedural remedy of resort to the Court in first instance. The argument is, in substance, that inasmuch as the Act declares and confirms the right of labor organizations to bargain collectively in behalf of employees, it must necessarily be construed to provide by implication for private proceedings in Court (by an interested labor organization) to enforce and make effective whatever advantages would accrue to the labor organization or its members from the Board's decisions under the Act. Faced with the fact that the enforcement procedures stated in the Act are those available only to the Board and that a person or organization "aggrieved" is given only the right to petition for a *review* of a Board Order but no right to petition to enforce an Order, the Amalgamated argues that the statutory plan of enforcement on petition of the Board should be construed to leave the way open for a labor organization to enforce by a civil contempt its private rights under the Act and the Board's findings. Inasmuch as the parallel language of the Federal Trade Commission Act leaves no right of a person aggrieved to institute a civil contempt,

the Amalgamated argues that the practice under the Act "should be assimilated to the practice under the Interstate Commerce Act" (Petition, page 13), in disregard of the fact that the latter statute specifically provides private administrative and judicial remedies for the protection of the private rights which it confers upon shippers.

Petitioner's contentions fly in the face of both the legislative purpose stated in the enactment of the Act and the grounds on which its constitutionality has been upheld by this Court as to employers carrying on their business solely or predominantly within one State. The Act was not passed or upheld on any theory that it could validly place under Federal jurisdiction the enforcement of *private* rights against intrastate concerns. The public interest and right as to interstate commerce unobstructed from any cause or source were declared to be paramount; and it is only when and where labor controversies may lead to strife which in turn may obstruct that commerce, that the Board may act to protect that commerce (*Consolidated Edison Company* v. *National Labor Relations Board*, 305 U. S. 197, 220-221; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601). The private interests of employers, labor organizations and employees, as to labor practices which might obstruct commerce, have been wholly subordinated to the public interest; and the Board's responsibility for initiating such steps as it deems to be necessary and proper to effectuate the policy of the Act is for the protection of the *public*, rather than primarily or directly the individual employee or labor organization, from the inconvenience and losses caused by the disruption of commerce by industrial strife.

All this was clearly stated in the Report of the House Committee on Labor (No. 972; 74th Congress), accompanying the Wagner bill (page 21):

> "The Board is empowered, according to the procedure provided in Section 10, to prevent any person from engaging in any unfair labor practice listed in

> Section 8 'affecting commerce', as that term is defined in Section 2(7). This power is vested exclusively in the Board and is not to be affected by any other means of adjustment or prevention. The Board is thus made the paramount agency for dealing with the unfair labor practices described in the bill.
>
> "The procedure provided is analogous to that in the Federal Trade Commission Act (Sec. 5) and is familiar to all students of administrative law. * * *
>
> "* * * No private right of action is contemplated. Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint. The form of injunctive and affirmative order is necessary to effectuate the purpose of the bill to remove obstructions to interstate commerce which are by law declared to be detrimental to the public weal."

The above-stated concept was put in the law, in virtually the language of the first paragraph quoted. Section 10(a) of the Act, which is headed "Prevention of Unfair Labor Practices" and contains in subsequent paragraphs (b) to (i), inclusive, all of the provisions for their prevention and for the enforcement of the Board's "cease and desist" Orders, is as follows:

> "SEC. 10 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practices (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

The powers of the Board to prevent "unfair labor practices" affecting commerce as defined are thus made "exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established", in any manner. The subsequent enforcement provisions of

Section 10 in terms enure only to the Board. Could language and its intent be broader, in negativing the exclusion of enforcement proceedings initiated by anyone else?

There has been no lack of uniformity in the decisions, in the various Circuits, as to nature of the rights and procedures created by the Act and as to claims of right of private persons or labor organizations to take the initiative in Court to enforce benefits they would gain under the Act. The ruling in the Second Circuit is not solitary or at variance. The Fifth, Sixth, and Ninth Circuits, have held the procedure provided by the Act is not and cannot be "made a private one to enforce a private right. It is a public procedure, looking only to public ends."

Agwilines, Inc. v. *National Labor Relations Board*, 87 Fed. (2nd) 146, 150 (C. C. A. 5th);
National Labor Relations Board v. *Arthur J. Colten and A. J. Colman*, 105 Fed. (2nd) 179 (C. C. A. 6th);
National Labor Relations Board v. *Hearst*, 102 Fed. (2nd) 658, 664 (C. C. A. 9th);
National Labor Relations Board v. *Carlisle Lumber Company*, 99 Fed. (2nd) 533, 537 (C. C. A. 9th).

The declaration by the Congress is decisive also against the petitioner's contention that the Act intended to assimilate the procedure under it to that provided expressly in the Interstate Commerce Act, and that therefore a labor organization should be given the same right to go to Court as a shipper has under express provisions of the Interstate Commerce Act, as to the enforcement of private rights. The Report accompanying the Wagner bill stated that "the procedure provided [in the Act] is analogous to that in the Federal Trade Commission Act (Section 5)."

Apart from such a declaration of legislative intent, the procedure provided in the Wagner Act will be found, on examination, to be closely analogous to that provided in the Federal Trade Commission Act. In its concepts and pro-

cedure, the Wagner Act was plainly adapted from the Federal Trade Commission Act. The concept of "unfair trade practices" was carried into the field of "unfair labor practices", and the procedure under the Federal Trade Commission Act appropriately went with it. Under neither Act may a private person file or prosecute a complaint before the Commission or Board. A labor union may file a "charge" (Section 10(b)), but it is for the Board to say whether or not a complaint and proceeding shall follow. Under both Acts formal complaint is by and in the name of the Commission or Board; the prosecution is by the Government, which bears the entire expense of it; both Acts were drawn to give the Board or Commission, at every stage of the hearing or enforcement, the discretion as to what shall be done, subject merely to the right of "aggrieved" persons to review and contest any Order. With respect to Section 5 of the latter, this Court said (*Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 25):

> "* * * Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs. The formal complaint is brought in the Commission's name; the prosecution is wholly that of the Government; and it bears the entire expense of the prosecution. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the Commission a complaint against the alleged wrongdoer. Nor may the Commission authorize him to do so. He may of course bring the matter to the Commission's attention and request it to file a complaint. But a denial of his request is final. And if the request is granted and a proceeding is instituted, he does not become a party to it or have any control over it."

The Interstate Commerce Act, on the other hand, creates a private administrative and judicial remedy; e. g., any interested person deeming himself aggrieved may file and prosecute a complaint *as of right*, at his own expense, and the carrier is required to answer, all as in civil judicial

proceedings. *Federal Trade Commission* v. *Klesner, supra.* An individual shipper is given the right to reparation, and procedure is expressly provided for a suit by the shipper in Court to enforce an Order of reparation (Section 9). The National Labor Relations Act contains no such features, but makes the Board the final arbiter as to when a complaint should be prosecuted and as to when an Order of the Board should be enforced, by contempt proceedings or otherwise.[1] Only when a labor organization is *aggrieved* by an Order of the Board has it any standing in Court as a petitioner, and then the standing is solely as a person *aggrieved by the Order* and for the sole purpose of reviewing the Order and asking that it be set aside or changed (Section 10(f) of the Act). If the Congress had intended to confer upon private individuals the right to institute proceedings in Court for any purpose other than review when aggrieved, it would have made express provision therefor, as it did in the following Acts:

Fair Labor Standards Act of 1938, 52 Stat. 1060, Sec. 16(a);

Interstate Commerce Act, 36 Stat. 1167, Sec. 9;

United States Shipping Board Act, 39 Stat. 728, 736, Sec. 22;

Packers and Stockyards Act, 42 Stat. 159, 165, Secs. 308, 309.

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[1] Where the Board has found, upon investigation, that contempt proceedings should be instituted because of non-compliance with decrees enforcing its Orders, the Board has instituted such proceedings.

See:

National Labor Relations Board v. *Bell Oil and Gas Company*, 98 Fed. (2nd) 405; rehearing denied 99 Fed. (2nd) 56 [C. C. A. 5th]; motion to punish for contempt denied.

National Labor Relations Board v. *Hopwood Retinning Company*, 104 Fed. (2nd) 302, 303 [C. C. A. 2nd]; motion to punish for contempt granted. Opinion shows that the Board's motion was supported by "affidavits * * * from officials and attorneys of the Board's Second Region located in New York, from officials of the Unions involved, and from twelve production employees, drivers, and helpers", which indicates that the Board conducted an investigation as to violations of its Order *before* it went to Court with a contempt proceeding.

National Labor Relations Board v. *Eavenson and Levering Company*, reported in L. R. R. August 28, 1939, page 973 [C. C. A. 3rd]; motion to punish for contempt denied.

But even under the Interstate Commerce Act, this Court has held that a shipper has standing in Court only when an independent right of his own is violated and not when the interest or advantage claimed to be violated is an incident of and is dependent on a right of others, under the Act (*Sprunt and Son* v. *United States*, 281 U. S. 249). Here the Act gives to the Board the right to ask enforcement of its Order, and the Board exercised that right, by its petition for enforcement. The civil contempt proceeding is merely a continuance of the earlier proceeding (*National Labor Relations Board* v. *Hopwood Retinning Company*, 104 Fed. (2nd) 302, 305), and was so treated and entitled by the Amalgamated (R. 1). The Amalgamated has no independent right or standing to initiate any manner of enforcement steps in the very proceedings in which the Board exercised its statutory right of petitioning for enforcement.

In the light of these considerations, the conclusion is inescapable that the Amalgamated has no standing to press a charge of civil contempt. Furthermore, the Amalgamated does not show or seek monetary damages, or assert any specific injury to itself or its members beyond the denial of its claim to the aid of administrative and judicial processes in its conflict with the majority Union. Absent any damages which can be admeasured, there could be no basis for maintaining a civil contempt (*Judelshon* v. *Black*, 64 Fed. (2nd) 116, 117):

> "* * * The theory of recovery in civil contempt proceedings is to compel the payment of damages by way of a fine, and, since no damages were suffered, there should be no finding of contempt."

Punishment for civil contempt of judicial process is an enforcement procedure which should be used sparingly and with great caution and deliberation (*Fox* v. *Capital Company*, 96 Fed. (2nd) 684). Where, as here, the paramount public interest is to be protected and vindicated, the initiative in all enforcement should consistently be that of the public agency, not of a contending labor organization.

"The function of guarding the public against acts deemed illegal rests with the public officials" (Brandeis, J., in *Ashwander* v. *Valley Authority*, 297 U. S. 288, 343). Investigation and ascertainment of the facts by the responsible public agency should *precede* resort to the Court with a charge of contempt.[1]

Conclusion

The decision and Order below were correct, as plainly in accord with the wording and the declared intent of the Act and with the sound functioning of the procedures set up in the field of labor relations. In view of the uniformity of the decisions in the Circuits as to the nature of the rights and procedures provided by the Act, we urge that no occasion exists for a review of this procedural question.

Respectfully submitted

WILLIAM L. RANSOM
HORACE E. WHITESIDE
P. M. BERKSON
Counsel for respondents

WHITMAN, RANSOM, COULSON & GOETZ
Solicitors for respondents
No. 40 Wall Street
New York City

[1] This would be in appropriate accord with the procedure stated by General Counsel for the Board to be that regularly followed as to complaints by labor organizations. In an address at Duke University on December 3, 1938 (3 L. R. R. M. 1044), Mr. Fahy outlined the course followed:

> "The Regional Director on receipt of the charge dockets it. He may investigate the matter personally or he may assign it to a field examiner. The stories of the Union and the employees are obtained. The story of the employer is obtained. A complete investigation is made, including the facts as to jurisdiction. This preliminary investigation both as to jurisdiction and the alleged unlawful practices, precedes any formal proceedings.
>
> "The Director has simply received a charge which he is investigating. During this stage 42 per cent of all our cases are dismissed or withdrawn either as a result of the Regional Office finding that the charge is so lacking in merit as not to warrant further proceedings, or because jurisdiction is believed to be lacking. The charge is either dismissed or, on the advice of the Regional Director to the charging party that he will proceed no further, is withdrawn. If, however, the investigation leads the Regional Director to believe that the charge is well founded, he seeks compliance."

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat., 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*) are as follows:

Section 9(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

Section 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. * * *

(e) The Board shall have power to petition any Circuit Court of Appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the Circuit Courts of Appeals to which application may be made are in vacation, any District Court of the United States (including the Supreme Court of the District of Columbia), within any Circuit or District, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such Order and for appropriate temporary relief or restraining Order, and shall certify and file in the Court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such Order was entered and the findings and Order of the Board. Upon such filing, the Court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined

therein, and shall have power to grant such temporary relief or restraining Order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the Order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the Court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original Order. The jurisdiction of the Court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals if application was made to the District Court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in Sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, Secs. 346 and 347).

(f) Any person aggrieved by a final Order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any Circuit Court of Appeals of the United States in the Circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing

in such Court a written petition praying that the Order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the Court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the Order complained of was entered and the findings and Order of the Board. Upon such filing, the Court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining Order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the Order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.